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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/580,200	03/30/2007	Jurgen Dorn	568-PDD-03-14-US-[43P]	2020
79990	7590	03/02/2010		
C. R. Bard, Inc. Bard Peripheral Vascular, Inc. 1415 W. 3rd Street P.O. Box 1740 Tempe, AZ 85280-1740			EXAMINER MENDOZA, MICHAEL G	
			ART UNIT 3734	PAPER NUMBER
			MAIL DATE 03/02/2010	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/580,200

**Applicant(s)**

DORN, JURGEN

**Examiner**

MICHAEL G. MENDOZA

**Art Unit**

3734

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 09 February 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-19, 21 and 22 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-19, 21 and 22 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/GS/US)  
Paper No(s)/Mail Date \_\_\_\_\_

- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

***Response to Arguments***

1. Applicant's arguments filed 1/11/2010 have been fully considered but they are not persuasive.
2. The applicant argues that St. Germain does not teach a second shaft element. The examiner disagrees. The examiner inadvertently misnumbered the reference number corresponding to the second shaft element. The second shaft element being reference number 15.
3. The applicant argues that St. Germain does not teach a proximal guidewire exit port. The examiner disagrees. The claim defines the proximal guidewire exit port as a port that is distal of the proximal end of the shaft. As seen in the figures; port 130 is distal the proximal end 120, and therefore reads on the limitation.

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

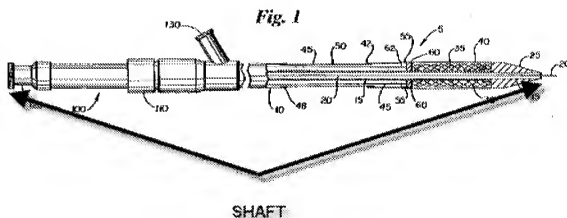
A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1-3, 5-8, 10-15, and 19-22 are rejected under 35 U.S.C. 102(b) as being anticipated by St. Germain et al. 5534007 (St. Germain).
6. St. Germain teaches a catheter device comprising: a shaft (5), a medical implant (35), a guidewire (20), a flushing lumen, a proximal guidewire exit port (see fig. 8); a sheath (40) that lies radially outside the medical implant in the catheter that is proximally

withdrawn from the medical implant, a first shaft element including at least one of a pull wire (45) and a rod to pull the sheath proximally; and a second shaft element including a pusher tube (15), wherein the sheath comprises a tapered distal tip (25), wherein the pull wire (45) is coupled to the sheath by an inner pull ring (55) located radially inside the sheath (40), the pull wire and pull ring being both of metal and with a metal bond between the pull wire and the pull ring (col. 4, lines 24-33), wherein the sheath is polymeric and carries within its wall thickness a braid of metallic filaments (col. 3, lines 39-42), wherein the pusher tube comprises a distal end to which is fixed side-by-side, the proximal end of a pusher-guider tube that defines a lumen for the guidewire (see figs. 6-8); wherein the pusher-guider tube comprises a spiral metal filament (col. 3, lines 8-17) that carries a stopper ring (60), wherein the second shaft element includes the pusher tube, the pusher-guider tube and the stopper ring (see figs. 6-8), a flushing sleeve (50) that is contiguous with the sheath and defines a lumen that contains the pusher tube (see figs.), a guider block (100) that has a cylindrical outside surface to receive the flushing sleeve, a guidewire lumen, and a lumen side-by-side with the guidewire lumen to receive the pusher tube (figs. 1-5), the flushing sleeve distal of the guider-block includes a bellows tube (see compression of 50 in figs. 1-3), wherein the flushing sleeve distal of the guider block includes a telescopic tube (see compression of 50 in figs. 1-3), wherein the guide block is fixed against axial movement, wherein the proximal guidewire exit port (120 can also be used as a guidewire exit port) is immediately proximal of the guider block, wherein the medical implant device comprises one of a self-expanding stent (35), a stent, a stent graft, and a filter.

7. As to the structural limitations set forth in claims 19 and 21, it has been held that to be entitled to weight in method claims, the recited structure limitations therein must affect the method in a manipulative sense, and not to amount to the mere claiming of a use of a particular structure. *Ex parte Pfeiffer*, 1962 C.D. 408 (1961).



### ***Claim Rejections - 35 USC § 103***

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 4, 9, and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over St. Germain et al.

10. As to claim 4, St. Germain teaches the claimed invention except for an outer puller ring. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use more than one puller ring, since it has been held that

mere duplication of the essential working parts of a device involves only routine skill in the art. *St. Regis Paper Co. v. Bemis Co.*, 193 USPQ 8.

11. As to claim 9, St. Germain teaches the claimed invention except for wherein the pusher tube and the pusher guide tube are separate and held side-by-side by an adaptor block. It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the pusher tube and pusher guide tube separate, since it has been held that constructing a formerly integral structure in various elements involves only routine skill in the art. *Nerwin v. Erlichman*, 168 USPQ 177, 179. And furthermore, parts 140, 60, or 25 are capable of acting as an adaptor block.

12. As to claims 16, St. Germain teaches the claimed invention except for the claimed length of around 75 cm. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use the claimed length, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233.

13. Claims 17 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over St. Germain et al. in view of Sullivan et al. 6514196.

14. St. Germain teaches the catheter as claimed in claim 15. It should be noted that St. Germain fails to teach a steering tube.

15. Sullivan teaches a catheter that is combined with a common steering tube (col. 5, lines 5-17). Therefore, it would have been obvious to one having ordinary skill in the art

to modify the catheter of St. Germain in view of Sullivan to help steer, push, or twist the device to a desired location.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MICHAEL G. MENDOZA whose telephone number is (571)272-4698. The examiner can normally be reached on Mon.-Fri. 9:00 a.m. - 5:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Todd Manahan can be reached on (571) 272-4713. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/M. G. M./  
Examiner, Art Unit 3734

/Gary Jackson/  
Supervisory Patent Training  
Art Unit 3700  
February 28, 2010